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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE BARD IVC FILTERS
PRODUCTS LIABILITY LITIGATION

No. MDL15-2641-PHX DGC

This Document Relates to:

Mark Swartz & Jeannie Swartz
v. C.R. Bard, et al.
Civil Action No.: 2:16-cv-04488-PHX DGC

**MOTION TO SUBSTITUTE PARTY
AND FOR LEAVE TO FILE
AMENDED SHORT FORM
COMPLAINT**

Counsel, pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, moves this Court for an Order substituting Jeanne Swartz, the Executor of the Estate of Mark Swartz, as Plaintiff in this civil action and seeks leave to amend Plaintiff's Short Form Complaint.

1. Plaintiff Mark Swartz originally filed a products liability action against Defendants on December 21, 2016 in the District Court of Arizona.

2. Plaintiff Mark Swartz passed away on October 25, 2018 in Gwinnett County, Georgia.

3. Under Georgia law, the cause of action of Mark Swartz survives his death. O.C.G.A. § 9-2-41.

4. On January 25, 2019, the Probate Court of Fulton County, Georgia appointed Jeanne Swartz as Executor of the Estate of Mark Swartz. A copy of the Letters Testamentary is attached as Exhibit "A".

1 5. Jeanne Swartz is the proper party to substitute for Plaintiff-Decedent Mark
2 Swartz and has the proper capacity to move forward with the surviving products liability
3 lawsuit on his behalf pursuant to Fed. R. Civ. P. 25(a)(1). “If a party dies and the claim is
4 not extinguished, the court may order substitution of the proper party. A motion for
5 substitution may be made by any party or by the decedent’s successor or representative.”
6

7 6. Jeanne Swartz further seeks leave pursuant to Fed. R. Civ. P. 15 to file the
8 attached Amended Short Form Complaint (Exhibit “B”) to substitute herself as Plaintiff
9 on behalf of the Estate of Mark Swartz and to add a survival action claim.
10

11 For the reasons set forth above, Jeanne Swartz requests that this Court grant her
12 request for substitution in this action and for leave to file the Amended Short Form
13 Complaint. Jeanne Swartz requests that this Court enter an Order substituting Jeanne
14 Swartz, Executor of the Estate of Mark Swartz, Deceased, as the named Plaintiff in this
15 case and allowing the filing of the attached proposed Amended Short Form Complaint.
16 Plaintiff has submitted a proposed Order with this motion.
17

18 Dated this 5th day of March, 2019.
19

20 Respectfully submitted,
21 **BLASINGAME, BURCH, GARRARD &
22 ASHLEY, P.C.**

23 /s/ Henry G. Garrard, III
24 Henry G. Garrard, III, Georgia Bar No. 286300
25 hgarrard@bbga.com
26 440 College Avenue
27 P.O. Box 832
28 Athens, GA 30603
 706-354-4000

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Henry G. Garrard, III